

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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TO: Commissioners and Alternates

FROM: Will Travis, Executive Director (415/352-3653 travis@bcdc.ca.gov)
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SUBJECT: Staff Report and Recommendation on Pending Legislation
(For Commission consideration on March 18, 2004)

Summary and Recommendations

The staff recommends that the Commission support Senate Bill 1568 (Sher), Senate Bill 1873 (Burton), and Assembly Bill 1876 (Chan), with amendments as discussed below. Senate Bill 1568, *San Francisco Bay Conservation and Development Commission* (Exhibit A), would implement the Commission's recommendations for improving its enforcement program. However, the language has been revised to address concerns raised by the Bay Planning Coalition. Senate Bill 1873, *Treasure Island Public Trust Exchange Act* (Exhibit B), would allow for extinguishing the public trust on certain lands at Treasure Island that are no longer needed for public trust purposes, in exchange for making certain lands on Yerba Buena Island suitable for trust purposes subject to the public trust. Assembly Bill 1876, *Public Beach Sanitation* (Exhibit C), would require health monitoring of Bay beaches similar to that now required under state law for beaches along the ocean coastline.

Staff Report

SB 1568. At its February 7, 2002 meeting the Commission adopted recommendations of its Enforcement Task Force for amendments to the McAteer-Petris Act to improve the Commission's enforcement program by (1) increasing penalties, (2) clarifying that Commission permits run with the land and can be revoked for proper cause, (3) requiring that sellers inform buyers of Commission jurisdiction, (4) clarifying the standard of review for legal challenge of enforcement actions, and (5) making it easier to obtain injunctions. Senator Byron Sher subsequently introduced Senate Bill (SB) 184 in the 2003-2004 legislative session to implement those recommendations. However, due, in part, to concerns raised by the Bay Planning Coalition (BPC), Senator Sher did not move the bill. The Commission staff has worked with the BPC to craft revisions to address their concerns. Senator Sher has now introduced SB 1568 (Exhibit A), which contains these revisions.

The revisions: (1) clarify that the causes stated in the bill for revoking a permit are delimiting rather than exemplary (however, this language change was overlooked in section 3(b) of SB 1568 and Senator Sher's staff is amending this drafting error); (2) mandate Commission adoption of regulations for the process to consider permit revocations and that also provide an



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opportunity for violators to cure a violation prior to permit revocation unless the permit has been repeatedly violated (see section 3); (3) change the proposed period to file a court challenge to a revocation order from thirty to ninety days (see section 3); (4) specify that, when imposing a penalty, a court shall consider the factors in Section 66641.9(a) of the McAteer-Petris Act (see section 6); (5) remove the proposed limitation on judicial review of a Commission enforcement action; and (6) establish a new category of “negligence” for higher daily court-imposed penalties (see section 6). The staff believes that these provisions address concerns raised by BPC while still raising penalties for violations and increasing the effectiveness of the Commission’s enforcement program. The staff is discussing with BPC their remaining concern regarding the proposed thirty-day limitation on court-appeal of an enforcement order (see section 4).

The Commission staff also noticed several other drafting errors in the bill, such as the inclusion of permit revocations in section 4 of the bill, and is working with Senator Sher’s staff to correct these errors.

The staff recommends that the Commission request addition of a section to the bill that would explicitly grant authority to the Commission to make grants. The Department of General Services has objected to the Commission’s longstanding practice of holding and disbursing in-lieu mitigation funds and passing through federal planning funds, on the grounds that the McAteer-Petris Act does not explicitly provide the Commission with this authority. The Commission has worked with the Coastal Conservancy to handle these grants; however, the logistical impediments and staff costs have proved considerable. Further, the Conservancy does not have the staffing to take over all grant-making on behalf of the Commission. Clarifying that the Commission has the ability to make grants would resolve the issue, conserve state resources and speed approval of projects.

SB 1873. Treasure Island consists of state tide and submerged lands that were granted to the City of San Francisco in 1933 and were filled in 1936 for the Golden Gate International Exposition. The U.S. Navy took the island over in the 1940’s to expand its existing naval base on Yerba Buena Island. When the base was closed in 1997, the Treasure Island Development Authority was established pursuant to state law to oversee the transfer and redevelopment of the closed federal base. Certain parcels on Treasure Island are proposed for uses that would not be consistent with the public trust.

SB 1873 (Exhibit B) would allow the State Lands Commission (SLC), subject to extensive conditions, to extinguish the public trust on portions of Treasure Island that are no longer useful for public trust purposes. These lands would be exchanged for lands on the adjoining Yerba Buena Island that are not now subject to the public trust, but have value for trust uses such as public access and Bay-related public recreation. The SLC can only make a trust exchange if it can determine that lands taken out of the trust have been filled, are cut off from access to navigable waters, and are no longer needed for the promotion of the public trust. No lands can be included that are below mean high tide line (the Commission’s Bay jurisdiction in most cases) or that are suitable to the public trust. Further, the exchange must not result in substantial interference with trust uses and purposes. Finally, the layout of streets will have to provide access to the public trust lands and be consistent with beneficial use of the trust lands.

AB 1876. State law now requires water quality monitoring of ocean beaches for bacteriological contamination posing health hazards to those using the beach and swimming in adjacent waters. However, this monitoring is not required for beaches in San Francisco Bay. The Bay has many public beach and recreation areas. Water quality can be an issue for water-contact recreation at Bay beaches, for instance Marin County posted over twenty advisories in a five-month period last year for water quality problems at Marin County beaches along the Bay and similar problems have been reported at other Bay beaches.

Assembly Member Wilma Chan has introduced Assembly Bill 1876 (Exhibit C), which would require regular water quality monitoring of Bay beaches and shoreline recreation areas for threats to public health. The bill would require posting of health advisories when tests show violations of established health standards. Permanent posting would be required for storm drains emptying at shoreline areas used for water-contact recreation. The bill would make Bay Area counties eligible for state funds designated for beach monitoring and monitoring is not mandatory in years where the Legislature does not appropriate sufficient monitoring funds. The sponsor of the bill, Save San Francisco Bay Association, after meeting with local Bay health departments regarding the legislation, proposes to revise the bill to clarify that testing will be for microbial contamination, such as total and fecal coliforms, and to clarify the definition of areas required for testing to be those used by the public for water-contact recreation. The revisions also change the testing interval from biweekly to weekly.